

**ASSEMBLY BILL**

**No. 1841**

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**Introduced by Assembly Member Buchanan**

February 12, 2010

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An act to amend Section 56346 of the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

AB 1841, as introduced, Buchanan. Special education: parental consent.

Existing law requires a local educational agency that is responsible for making a free appropriate public education and related services to a child with a disability to make reasonable efforts to obtain informed consent from the parent of the child before providing special education and related services to the child, as specified. Existing law requires a local educational agency to file a request for due process, as specified, if the parent or guardian of a child who is an individual with exceptional needs refuses all services in the individualized education program after having consented to those services in the past.

This bill would delete that latter requirement and, pursuant to a specified federal regulation, instead would prohibit a public agency, in the event that the parent or guardian of a child submits a written revocation of his or her consent at any time subsequent to the initial provision of special education and related services to the child, from continuing to provide special education and related services to the child or from using specified procedural safeguards to obtain agreement or a ruling that the services may be provided to the child. The bill would require the public agency to provide prior written notice, as specified, before ceasing the provision of the special education and related

services. The bill would require that a public agency be deemed in compliance with the requirement to make a free appropriate public education available to a child if the agency ceases to provide the child with further special education and related services pursuant to these provisions. The bill would provide that a public agency is not required to convene an individualized education program team meeting or develop an individualized education program for the child for further provision of special education and related services.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 56346 of the Education Code is amended  
2 to read:  
3 56346. (a) A ~~local educational~~ *public* agency that is responsible  
4 for making a free appropriate public education and related services  
5 to the child with a disability under this part shall seek to obtain  
6 informed consent from the parent of the child before providing  
7 special education and related services to the child pursuant to  
8 Section 1414(a)(1)(D)(i)(II) of Title 20 of the United States Code.  
9 The ~~local educational~~ *public* agency shall make reasonable efforts  
10 to obtain informed consent from the parent for the initial provision  
11 of special education and related services to the child in accordance  
12 with Section 300.300(b)(2) of Title 34 of the Code of Federal  
13 Regulations.  
14 (b) If the parent of the child fails to respond or refuses to consent  
15 to the initiation of services pursuant to subdivision (a), the ~~local~~  
16 ~~educational~~ *public* agency shall not provide special education and  
17 related services to the child by utilizing the procedures in Section  
18 1415 of Title 20 of the United States Code or the procedures in  
19 subdivision (e) of Section 56506 in order to obtain agreement or  
20 a ruling that the services may be provided to the child.  
21 (c) If the parent of the child refuses to consent to the initial  
22 provision of special education and related services, or the parent  
23 fails to respond to a request to provide the consent, both of the  
24 following are applicable:  
25 (1) The ~~local educational~~ *public* agency shall not be considered  
26 to be in violation of the requirement to make available a free  
27 appropriate public education to the child for the failure to provide

1 the child with the special education and related services for which  
2 the ~~local educational~~ public agency requests consent.

3 (2) The ~~local educational~~ public agency shall not be required  
4 to convene an individualized education program team meeting or  
5 develop an individualized education program under this part for  
6 the child for the special education and related services for which  
7 the ~~local educational~~ public agency requests consent.

8 ~~(d) If the parent or guardian of a child who is an individual with~~  
9 ~~exceptional needs refuses all services in the individualized~~  
10 ~~education program after having consented to those services in the~~  
11 ~~past, the local educational agency shall file a request for due~~  
12 ~~process pursuant to Chapter 5 (commencing with Section 56500).~~

13 *(d) (1) Pursuant to Section 300.300(b)(4) of Title 34 of the*  
14 *Code of Federal Regulations, if the parent or guardian of a child*  
15 *submits a written revocation of his or her consent pursuant to this*  
16 *section at any time subsequent to the initial provision of special*  
17 *education and related services to the child, the public agency shall*  
18 *not do either of the following:*

19 *(A) Continue to provide special education and related services*  
20 *to the child, but shall provide prior written notice in accordance*  
21 *with Section 56500.4 before ceasing the provision of the special*  
22 *education and related services.*

23 *(B) Use the procedural safeguards specified in Chapter 5*  
24 *(commencing with Section 56500), including mediation and the*  
25 *due process complaint procedures, to obtain agreement or a ruling*  
26 *that the services may be provided to the child.*

27 *(2) A public agency shall be deemed in compliance with the*  
28 *requirement to make a free appropriate public education available*  
29 *to a child if the agency ceases to provide the child with further*  
30 *special education and related services pursuant to this subdivision.*  
31 *A public agency is not required to convene an individualized*  
32 *education program team meeting or develop an individualized*  
33 *education program pursuant to this article for the child for further*  
34 *provision of special education and related services.*

35 *(e) If the parent of the child consents in writing to the receipt*  
36 *of special education and related services for the child but does not*  
37 *consent to all of the components of the individualized education*  
38 *program, those components of the program to which the parent*  
39 *has consented shall be implemented so as not to delay providing*  
40 *instruction and services to the child.*

1 (f) With the exception of a parent of a child who fails to respond  
2 pursuant to subdivision (b), or refuses to consent to services  
3 pursuant to subdivision (b), if the ~~local educational~~ *public* agency  
4 determines that the proposed special education program component  
5 to which the parent does not consent is necessary to provide a free  
6 appropriate public education to the child, a due process hearing  
7 shall be initiated in accordance with Section 1415(f) of Title 20  
8 of the United States Code. If a due process hearing is held, the  
9 hearing decision shall be the final administrative determination  
10 and shall be binding upon the parties. While a resolution session,  
11 mediation conference, or due process hearing is pending, the child  
12 shall remain in his or her current placement, unless the parent and  
13 the ~~local educational~~ *public* agency agree otherwise.

14 (g) In accordance with Section 300.300(d)(4)(i) of Title 34 of  
15 the Code of Federal Regulations, if the parent of a child who is  
16 home schooled or placed in a private school by the parents at their  
17 own expense does not provide consent for the initial assessment  
18 or the reassessment, or the parent fails to respond to a request to  
19 provide consent, the ~~local educational~~ *public* agency ~~may~~ *shall*  
20 not use the consent override procedures described in Section  
21 300.300(a)(3) and (c)(1) of Title 34 of the Code of Federal  
22 Regulations. The ~~local educational~~ *public* agency is not required  
23 to consider the child as eligible for services under Article 5.6  
24 (commencing with Section 56170) of Chapter 2.